DOCUMENT RESUME

ED 228 736 EA 015 586

AUTHOR Kley, Raymond C.; Glaser, Roberta E.
TITLE Public Law 94-142: How to Keep the Ball In Your Court and Out of the Law Court.
PUB DATE Feb 83
NOTE 24p.; Paper presented at the Annual Meeting of the National Association of Secondary School Principals (67th, Dallas, TX, February 4-8, 1983).
PUB TYPE Speeches/Conference Papers (150) -- Guides - Non-Classroom Use (055) -- Reports - Descriptive (141)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Administrator Role; *Compliance (Legal); *Court Litigation; *Disabilities; Elementary Secondary Education; Legal Problems; Program Implementation
IDENTIFIERS *Education for All Handicapped Children Act

ABSTRACT

This presentation was meant to identify for principals some of the issues surrounding the education of the handicapped by the use of questions and answers that include citations of selected federal court cases. Issues discussed include history of the education of the handicapped, problems related to handicapped student identification and testing of the handicapped, explanation of terms related to education of the handicapped and terms used in P.L. 94-142, cost of educating the handicapped, the roles of all those involved in education of the handicapped, communication between those responsible for designing programs for the handicapped (such as teachers or principals) and those responsible for the school budget, possible causes for future court cases, and other areas of concern. The author concludes that education of the handicapped can be accomplished economically if boards of education and professional staff members have a deep commitment to such a program supported by written plans for implementation. Included is a handout describing the superintendent's and the principal's responsibilities in education of the handicapped. (JM)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED228736

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

X This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Raymond C. Kley
Roberta E. Glaser

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

PUBLIC LAW 94-142: HOW TO KEEP THE BALL IN YOUR COURT AND OUT OF THE LAW COURT

Raymond C. Kley

Roberta E. Glaser

Paper presented at the Annual Meeting of the National Association of Secondary School Principals (67th, Dallas, TX, February 4-8, 1983).

EA 015 586

ABSTRACT

PL 94-142 How to Keep the Ball in Your Court and Out of the Law Court

The purpose of this session is to examine the character and effects of P.L. 94-142, the "Education of All Handicapped Children" act, and to make recommendations concerning its implementation.

Important in the EAHA is the "least restrictive environment" yet court cases on this subject are almost nil and mainstreaming has barely surfaced in the courts. Courts have not determined an operable definition or principle for guidelines regarding a free and appropriate education.

The courts have determined that even though programs for the handicapped are expensive, the results justify the cost. This act requires services for the handicapped that it does not provide for the non-handicapped. In the area of discipline, the handicapped are expected to follow general school rules.

Case law is specific regarding the rights of parents to participate in decision making for their children's education programs. Advocacy groups have filed suits which have resulted in decisions that affect members of a class, present and future. An aggressive application of the law results in fewer court cases.

School administrators must establish exhaustive procedures for substantive and procedural due process. Districts must also have placement policies which include assessment and independent testing when requested.

The philosophy of least restrictive environment must be employed to the maximum extent. In order to have an appropriate education for the handicapped, the IEP must be carefully prepared and reviewed at least annually.

Administrators must identify and work cooperatively with various advocacy groups. Knowledge of the provisions of P.L. 94-142 will require school authorities to study new government rules and current court decisions.

Still unresolved is the entire area of related services. Some of these services have been identified as the extended school day, the 180 day school year and the issue of resident schooling. Finally, the education of the handicapped can be accomplished economically if school boards create an atmosphere of deep commitment to such a program.

HAND OUT

THE SCHOOL ADMINISTRATOR'S ROLE IN EDUCATION OF THE HANDICAPPED

I. The Superintendent's Responsibilities

- A. Know the basic laws and regulations (Federal and State) regarding PL 94-142 and state standards and administrative rules
- B. Subscribe to appropriate professional journals and share relevant information with administrators
- C. Budget for implementation of PL 94-142, secure school board approval and keep them apprized of the program
- D. If the district has 7000 or more pupils, employ a coordinator or director of special education services
  - 1. Identify this person as a resource person and administrator who is responsible for
    - a. Maintaining information on laws, regulations, standards, court decisions, and board policies
    - b. Distributing such information or securing the answers
    - c. Providing a liaison with other government agencies whether local, regional, state or federal
    - d. Functioning as a trouble shooter
    - e. Attaining inter-school and inter-district cooperation, especially in seeking placement or other alternatives for low incidence handicapped
- E. If the district has fewer than 7000 pupils, delegate to the principals responsibility for implementation of PL 94-142 including referral, identification, assessment, IEP conferences, placement and all the other matters of due process
  - 1. Provide inservice training for the professional staff

II. The Principal's Responsibilities

- A. Know basic laws and regulations (Federal and State)
- B. Understand state standards, state administrative rules and local board policies
- C. Be familiar with the chain of command or flow of authority in the local school administrative organization
- D. Keep current on changes which may affect you
  - 1. Read professional literature
  - 2. Subscribe to special newsletters or publications on the handicapped
  - 3. Attend conferences, seminars, meetings, etc.
- E. Establish your own resource file on laws, standards, regulations, administrative rules, board policies, etc.
- F. Determine who has what responsibilities in your building(s) for the handicapped
  - 1. Define job responsibilities and communicate these to the staff
- G. Provide inservice programs to educate the staff
  - 1. Bring in knowledgeable people who can help in the many areas of services for the handicapped
- H. Create a staff newsletter for the handicapped program and allot a section of your regular newsletter to share what is happening with the handicapped
- I. Communicate with regular teaching staff members
  - 1. Keep them informed
  - 2. Act promptly on their referrals and furnish them with a reply regarding your actions
  - 3. Explain least restrictive environment and the problems of mainstreaming
- J. Organize a record keeping system
  - 1. Keep records confidential
  - 2. Communicate who has access to the records
- K. Work with parents
  - 1. Train the staff to work in this sensitive area
  - 2. Be aware that if the parents don't agree with what you want to do, they don't have to do it
- L. Be diplomatic when recommending inter-school and inter-district placements
- M. Establish well-planned, efficient and effective annual reviews and reexaminations
  - 1. Make sure the staff is well-informed about responsibilities and timelines
- N. Build a competent, cooperative, functioning team

PUBLIC LAW 94-142: HOW TO KEEP THE BALL IN YOUR COURT
AND OUT OF THE LAW COURT

This presentation is meant to identify some of the issues surrounding the education of the handicapped by the use of questions and answers and citations of selected cases that have been resolved in the Federal courts. We hope that after you have participated in this session, you will want to establish policies and procedures to insure the fact that in your district educational decisions will be made in the schools rather than in the courtrooms.

Principals, in general, place the student's welfare foremost in the school's priority. In consequence, not many principals have been cited into court for PL 94-142 violations. Therefore, principals need to make reliable recommendations to placement committees and to other school authorities who are less informed and apt to make costly errors in judgment.

Historically, the mission of the public schools in the United States has undergone change. At first only a few children participated, now all are encouraged, if not mandated by law, to attend school. Even though children and their parents now accept free public education as a right, initially there were those who were unable to attend: the handicapped whose impairments range from slight learning disabilities to the more serious orthopedic and mental disorders.

To assure that all handicapped children receive a free public education, Congress passed Public Law 94-142 which was signed into law on November 29, 1975, by President Gerald Ford.

Since there was little, if any, opposition, the passage of this law has been described as the quiet revolution. Its goal is the right to an education for all children whatever the handicap. This era has been characterized as the period in which the battle cry for public policy changed from one of charitable solicitation to an outright declaration of rights.

PL 94-142 is intended to open school doors to handicapped children but does not guarantee them any level of success. Courts have held that appropriate education is not synonymous with "best possible" since it is not an education which enables every child, handicapped or not, to achieve his/her full potential inasmuch as the best public schools lack resources which would enable every child to achieve his/her full potential.

Q: Did education of the handicapped begin with the passage of PL 94-142?

A: Education of the handicapped has existed in some form since about 600 A.D. Prior to that time, Nature was permitted to eliminate the handicapped. The Spartans consigned handicapped individuals to the great pit in Taygetus. Later in recorded history, handicapped persons were trained to be used as professional mourners at funerals.

From 1500 A.D. to the present, great advances have been made in the education and training of the handicapped. In the beginning, charitable organizations were responsible for much of the education. Then special schools were begun. Many of these specialized in certain handicaps i.e. blind, deaf, crippled.

When laws were passed regarding discrimination against the handicapped, educational programs were set up in the public schools to serve

as many children as could safely be accommodated. Other children with severe handicaps are still cared for in special schools or special classes.

Q: What problems have school districts experienced in the area of student identification for special programs?

A: Problems have arisen in the area of identification of students. These problems centered around selecting appropriate tests. Sufficient efforts should be made to modify testing procedures so that a student is tested in the desired area. When placement is being considered, schools should consider the child's physical condition, sociocultural background and adaptive behavior in the home and school.

A number of interesting cases have arisen from questions relative to testing procedures. Although the cases were alleged violations of PL 94-142, some were actually found to have been based on cultural bias rather than a bias toward handicapped children.

In Larry P vs Wilson black students brought action challenging the use of IQ tests used in placing students in special classes for the EMR or the Educable Mentally Retarded.

The decision was rendered in favor of the plaintiffs. The court found that intelligence tests which had a disproportionate effect on black children violated the provisions of PL 94-142. The plaintiffs were judged to be representatives of a class, and the court enjoined the use of intelligence tests for placement purposes until it could be shown that the particular test or tests were not racially or culturally discriminatory and would be administered in a non-discriminatory fashion. State defendants would be required to monitor and eliminate any disproportionate placement

of black children in such programs.

Q: Have other questions regarding testing and the handicapped arisen?

A: In Brookhart vs Illinois parents of several handicapped children asked the Illinois State Superintendent of Education to require that their local school district issue regular high school diplomas to their children, notwithstanding the fact that their children failed to pass a minimum competency test as required by the local school board. The State Superintendent ordered that the children be given their diplomas. The school district appealed to a U.S. district court in Illinois. The court held that local school boards have the right to develop reasonable means to determine the effectiveness of their educational programs with respect to all individual students to whom they issue diplomas and the use of a minimum competency test was determined a reasonable means of measuring that effectiveness.

The court held that nothing in the Education for All Handicapped Children Act or other federal or state laws prohibits such testing. The court further held that such competency testing need not be modified to take into account a student's lack of mental ability or capacity to do well in such a test. The court did advise schools to modify tests in order to minimize the effect of physical incapacity. For example, the court suggested that a blind student not be given a competency test which was printed in a normal manner and not in braille. However, tests should not be modified so as to change their purpose drastically. To do so would fail completely to measure the results of the educational process.

In Parents in Action vs Harman, two black children were placed in classes for the educable mentally handicapped after achieving low

scores on standard intelligence tests. They brought suit on behalf of all similarly situated black children against the city board of education and its officers responsible for administration of the relevant programs. The plaintiffs alleged that the intelligence tests administered by the city board of education were culturally biased against black children and that the use of such tests violated the equal protection clause of the Fourteenth Amendment as well as various federal statutes.

Judge Grady held that: (1) though one item on one of the challenged intelligence tests and eight items on two other tests were culturally biased against black children, or at least sufficiently suspect that their use was inappropriate, the items would not significantly affect the score of a child taking the test and did not render the tests unfair, and (2) the challenged tests, when used in conjunction with the statutorily mandated other criteria for determining an appropriate educational program for a child did not discriminate against black children in the city's public schools. Judgment was made for the defendants.

Anderson vs Banks challenged the institution by a county school district of an exit examination. The District Court held that: (1) the plaintiff's action was justifiable; (2) the institution and administration of a diploma policy did not in itself violate the Fourteenth Amendment; (3) the diploma requirement could not be constitutionally imposed on students who had attended classes prior to the abolishment of a dual system; (4) the tracking system formerly practiced by the county school district did not pass constitutional requirements.

Q: What legal terms must one understand regarding PL 94-142?

Class Action: This is a suit brought by an individual or a group

of individuals against another individual or group of individuals seeking injunctive or temporary relief. A class action suit differs from other suits because it links an individual with an identifiable group (i.e. crippled children, blind, etc.). If the case is decided in favor of the plaintiff, the decision holds for members of the present group and others who could become members of the group in the future. The ruling has the same effect as a law.

Damages: This is a monetary award to one litigant depending on how severe a disadvantage was sustained.

In many court cases litigants fear the awarding of damages to the prevailing individual or group, but this has not been the case in decisions rendered. In Campbell vs Board of Education, Judge Robert S. Vance ruled that no damages could be awarded because damages were not capable of reasonable determination. Judge Eugene Mickerson in Gregg B. vs Board of Education decided that reimbursement for tuition was an appropriate form of limited damages which could be awarded. Also, in Jaworski vs Board of Regents, Judge Raymond J. Pettine ruled that money damages are not available under the Education for all Handicapped Children Act. The assumption is that the only form of monetary damages that may be awarded is a limited reimbursement for tuition payments expended by parents for a child's education if the school district was negligent in providing services.

Liberal awards to plaintiffs for attorney's fees have been granted, but it has been determined that legal action for monetary damages is contrary to both the history and purpose of the Education for all Handicapped Children Act of 1975 and its statutory predecessors.

Doe: In any number of cases the courts have been lenient in making public the names of plaintiffs in Federal cases. These individuals used assumed names such as Jane Doe or John Doe. Reasons given for such actions were to prohibit the exhorbitant amount of publicity surrounding such suits. Another reason given for such a decision was that individuals would be more likely to come forward to seek redress of grievances through the courts if they wouldn't be subject to the public scrutiny that usually surrounds such action.

Q: The term "reasonable" has been mentioned in certain litigations. How is this term defined in the education of the handicapped?

A: Many individuals have requested the ultimate in educational plans and related services. Courts have generally held that school boards who took a sane and equitable approach to handicapped programs would pass the legal requirements.

In the Rowley case the U.S. Supreme Court held that when a child was achieving at or above the level of her classmates, the services of a sign language interpreter was not a reasonable request.

Q: The law mentions a "free and appropriate" education. What does this mean?

A: Free Appropriate Public Education means special education and related services which (1) are provided at public expense, under public supervision and direction, and without charge; (2) meet the rules for special education adopted by the State Board of Education; (3) include an elementary education, secondary education, and may include early childhood education; and (4) are provided in conformity with an individualized education program. School districts are responsible for the identification

of all handicapped children below age 22. Programs must be provided for handicapped children aged 3 through 21.

Q: How should a district insure that a "free and appropriate" education is being received by handicapped children?

A: The diversity of opinion or findings of the courts on the specific issues is expected due to the newness of the Education of All Handicapped Children Act. When this law was passed by the Congress, there was no attempt to define clearly what a "free appropriate education" is. Also, as seen in the Federal Register, there was a failure to define the concept and the interpretation of "appropriate" was left to each local school district. Thus the courts have not arrived at any working definition or principle that could be a guideline to follow.

It is recommended that school authorities establish public relations programs in order to produce understanding in the school communities relative to the available special education programs and ways that individuals apply for and receive services. These programs should include the tri-annual community search for handicapped children and the annual in-school search for the handicapped.

The educational plans for the handicapped should be clearly identified on the IEP or Individualized Education Program which must be reviewed annually. The IEP details the most appropriate educational program for an individual. Authorities must be responsible for providing related services when needed, and they must accept responsibility for locating and using funds in an enterprising manner. Boards of education must provide the program and services at public expense under public supervision and direction, since no charges may be made to the client

for any services.

In Sessions vs Livingston the parents of handicapped and exceptional children sued state school officials alleging that their children had been deprived of meaningful, free and appropriate public education. The District Court held that by not seeking the administrative review provided for in the Education for the Handicapped Act, the plaintiffs failed to exhaust their administrative remedy provided by the Act and were not entitled to maintain the action.

In M. R. vs Milwaukee action was brought on behalf of handicapped children challenging a proposed termination of day service placements. It was alleged that deprivation of special education facilities and program constitutes irreparable harm. The placement of between 150-200 handicapped children who attended year round classes would have been affected and damages were sought.

On July 3, 1980, a preliminary injunction prevented the removal of the children from the school until a final hearing could be held. The final decision dismissed all defendants except the Milwaukee Public Schools and denied any monetary damages but enjoined the Board from terminating placements of the plaintiffs until the parents could file an administrative appeal with the state agency. This was a class action suit and the decision pertains to all similarly affected children in the Milwaukee Public Schools.

Q: What are related services? How involved must a school district become in the area of related services?

A: Related services mean transportation and such developmental, corrective and other support services as are required to assist a

handicapped child to benefit from special education. This act explicitly requires that schools provide services for handicapped students that it does not provide for non-handicapped students.

Still to be resolved or defined are issues already in the courts that in all probability will continue to reappear. These include the twelve-month school year and the extended day for specific handicapped students. In Armstrong vs Kline (166) Judge Newcomer decided that a state could not incorporate a 180 day school year in the plan for the education of the handicapped. The courts in (168) Tatro vs Texas wrestled with the question of how far a school must go to meet the needs of children with respect to related services. In this case failure to provide clean intermittent catheterization was a violation of PL 94-142. The court reasoned that catheterization was integral to the special education to which the child is entitled since without it she could not be present in the classroom at all.

Judge F. B. Vela, in Espino vs Besteiro (179), ruled that the school district must provide a fully air conditioned room to regulate the student's body temperature adequately. The reasoning behind the decision was that the plaintiff demonstrated a likelihood of success. In Papacoda vs Connecticut (188), Judge Blumenfeld decided that the state was responsible for related services which included psychological services and psychotherapy through graduation. These services were in addition to room and board in a therapeutic environment in which the services would be effective.

Q: Describe due process.

A: The U.S. Constitution provides that no person shall be deprived of

life, liberty, or property without due process of law. Due process itself is basically the right to have prior notice, a hearing and right to appeal. Due process is often divided into two broad categories, substantive and procedural: Substantive Due Process involves the fundamental right or power of the government to take the action contemplated; Procedural Due Process involves the methods or procedures used by the government to take the contemplated action.

Q: Due process is an integral part of the education of handicapped. What are some relevant suggestions for building principals?

A: The area that seems to be most litigated is that of due process and administrative procedure. The Education of All Handicapped Children Act is clear enough in the language used to describe the step by step protection of the rights of the child and parent in such areas as identification, assessment, and confidentiality of records. Judges are having little difficulty in deciding the procedural or due process cases.

It is recommended that school administrators establish exhaustive procedures for procedural and substantive due process in order to handle cases dealing with handicapped children. There must be a deep commitment to this philosophy, and those responsible must do more than give cursory attention to programs for the handicapped.

Temporary placement procedures must be organized for children whose assessment is not complete. When testing has been completed, placement teams must be organized according to district policy. Parents must be included in this process. A system by which parents may challenge results must be organized, and a policy regarding independent educational evaluation must be available. In the event that a final accord cannot be

reached, a policy for securing the services of an impartial hearing officer must be adopted.

It is recommended that administrators establish a system in each building for collecting and storing records of handicapped children. Such a system must contain a case management document so that the determination of the case status is readily available.

Finally, it is suggested that principals learn the due process procedures completely. When the procedures are learned, it is suggested that principals involve themselves in at least two practices involving the due process procedure. One practice session could be held with the school personnel who would normally participate. The second should be with members of an advocacy group present. Both should critique the trial procedure.

An example of a due process case is Vogel vs School Board (150). The Board contemplated transfer of the Vogel children from an elementary school in the district to a state school for the severely handicapped. There was insufficient prior notice to the parents and the first level hearing was claimed to be defective in that their member panel failed to make factual findings and the decisions to which the Vogels were entitled. There was a state level review but without an impartial hearing officer. The case was remanded or sent back to the State Board of Education for a new hearing with an impartial hearing officer. The court stipulated that at least five days prior to the hearing date plaintiff Vogel was to be provided by the defendant (the Board of Education) a complete statement of all evidence which was to be introduced at the administrative hearing including tests and the names of any witnesses who would testify and

copies of any documents to be introduced.

Q: Isn't it true that programs for the handicapped place a significant burden on the resources of our public school systems?

A: In Frankel vs Commissioner of Education (147) the school board was directed to reimburse the plaintiff for tuition to a special school. In Campbell vs Board of Education (175), the attorney's fees were set at $36,465. In addition the defendants were given 60 days to submit an appropriate IEP and plan for "mainstreaming" the student. In this case the court not only awarded the attorney's fees but also took charge of the education program of the student. In Gladys J. vs Pearland, Judge Hugh Gibson decided that the school district must pay for residential placement. Judge Harry Clairborne, in the Department of Education vs Katherine D., decided that this student was entitled to transportation and a regular education with special attendance provisions at school board expense. Attorney's fees and court costs were also assessed to the Board of Education.

In the related service area, school boards must spend many dollars to provide needed services. There are literally hundreds of cases in state and federal courts where financial obligations have been incurred by school boards by court order.

Judge Robert F. Peckham, in his decision in Boxall vs Sequoia stated that Congress has determined that it is worth the price to develop the potential of the handicapped and has even allocated substantial funds for this purpose.

School officials are aware of the federal funds provided for the education of the handicapped. They are indeed substantial, but woefully inadequate.

Q: What agency is responsible to provide for the necessary organizational structure, staffing and supervision of the educational program for the handicapped?

A: The Board of Education through its state educational agency is responsible to adopt and update a plan for the education of the handicapped in a state approved school. Such plans must be in accordance with applicable federal and state laws.

These responsibilities include providing a proper school setting and all related services. Programs may be accomplished in a day-type or residential setting. All plans must be based on the unique needs of each handicapped child. These needs call for the elimination of physical barriers in new or remodeled buildings.

The courts have demonstrated the fact that they really do not want to become involved in educational plans. In a number of cases the courts have remanded the entire situation back to the school systems for a satisfactory educational resolution monitored by the courts.

Q: Who are the individuals involved in the education of the handicapped and what are their roles?

A: Different individuals are instrumental in carrying out the identification of handicaps and in the proper treatment of these handicaps. The parents of handicapped children and concerned individuals have the right to participate actively in the planning and decision-making process of providing educational services. This is one area in which case law speaks rather clearly. However, they must exhaust all administrative remedies prior to filing suit or the likelihood exists that the cases will be dismissed.

Since advocacy groups have become a way of life in the United States, many of these groups have seized the cause of the handicapped and have filed suits for alleged violations of certain sections of PL 94-142. When this happens, a class action suit results. This type of decision has far-reaching implications because it deals with members of a class, present or future.

Board members have the responsibility to establish due process procedures. Failure to do so often results in board members being cited as part of a suit.

The courts have the role of deciding issues posed by the administration of this law. Many disputes have arisen, and the courts have spoken. Even when there was not a clear answer within the body of the law, the courts have decided the issue.

An example of one of the peculiar cases that have been initiated is the case of Phyllis Wolff. This case was filed even though the school board acted in a prudent manner. This is the case of a 15-year-old New York girl, 3-1/2 feet tall with a partially amputated right arm, functionally impaired left arm and hand, and legs of approximately one foot in length. She requested and received from her school district a special van to transport her to school and the help of an aide during the school day. The school sponsored a Spanish class trip to Spain for which this student was academically qualified. The trip involved tours of a great many historical sites which required the students to walk many miles. The school denied her permission to go on the trip on grounds that she would endanger herself by attending. She sued the school seeking to enjoin it from enforcing its ban on her attendance. She argued that

because the school was receiving federal funding for this trip, she could not be barred from going simply on the grounds that she was handicapped.

Judge Roger Miner ruled that federal law specifically states that a handicapped student may not be excluded from participation in a program receiving federal funding solely on the basis of his or her handicap if the student is otherwise qualified. However, in this case, after the court itself witnessed the difficulty this child had in even climbing onto the witness stand, it was held that she was not otherwise qualified since she could not fulfill the physical requirements of this trip. Her complaint was dismissed.

Q: Least restrictive environment means that to the maximum extent appropriate handicapped children are educated with children who are not handicapped and that special classes, separate schooling, or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. What recommendations will aid in bringing about compliance in this area?

A: A key principle of the EAHA is the "least restrictive alternative" and yet the court cases on the subject are almost nil. While the courts have supported the philosophy of the least restrictive environment, they have also decided that students must be able to fulfill the physical requirements demanded by such placement.

One case that was filed regarding least restrictive environment was Selelyo vs Drury. The parents alleged that a mentally retarded child was being denied the most appropriate education in the least restrictive

environment. This trial resulted in the child's being placed for a half day in a school which serves only handicapped students. The other half day is spent at an elementary school which serves non-handicapped peers.

A: At this particular time it would appear wise to mention information and suggestions which relate to the internal communication in a school system.

A: Many problems in the administration of the education of the handicapped result from poor internal communication within the school district. The placement committee decides upon a placement. Then the IEP is written. Both deeds commit the district to financial expenditures. The superintendent is responsible for district budgets and fiscal responsibility. There is a problem between those who spend and those who have the responsibility to spend. This situation could result in the central office balking at providing necessary services because of a communication breakdown.

To alleviate this situation, all persons who could become involved with the education of the handicapped should be thoroughly aware of the provisions of the law. Each local board must adopt programs which are reasonable to administer. This places the responsibility squarely on the shoulders of the administrator because that person recommends the policy to the Board.

Q: Are there other areas of general concern to school administrators?

A: Administrators cannot defend school policies and rules by saying that they apply equally for handicapped and non-handicapped children. Equality is not a test for an appropriate education. Services must be provided for handicapped students that are not provided for non-handicapped

(including all forms of related services and tutoring).

Administrators must work with, rather than in opposition to, advocacy groups. A wide disparity exists between what Congress wanted to do and what it could afford. Research into methods of financing handicapped programs is a necessity.

School officials should keep abreast of new trends in court decisions during the coming years. To do this will require studying new government rules and regulations pertaining to the education of the handicapped. The possibility exists that a new Congress could profoundly modify the law at any time. If this were to happen, it is possible that an entirely new situation could be created for the education of the handicapped.

An example of one of the unique cases is Green vs Johnson. A 21-year-old inmate at Franklin County Massachusetts House of Correction brought action seeking declaratory and injunctive relief complaining of alleged failure of the penal system to deliver required special education services to inmates who were under age 22. They had not received a high school diploma and were eligible for free and appropriate special education under state and federal law. Judge Freedman ruled that the incarcerated status of the plaintiff class did not preclude their entitlement to a free and appropriate education. State officials were ordered to provide appropriate services.

Q: What predictions can one make relative to possible changes in PL 94-142, especially in the area of relaxing selected provisions of the law?

A: During the fall of 1982 some suggestions regarding changes in the

provisions of PL 94-142 were made. These changes were suggested primarily to help the Federal Government in its budget balancing efforts. However, because advocacy groups were able to convince the administrative agencies that such a determination would not be in the best interest of school children, and because the dollars to be saved were not substantial, no actual changes were made in the provisions of the statute. A number of minor changes were made which simplified the placement and IEP procedures.

It is possible that the Congress currently seated has stronger social feelings and that efforts to change provisions in the Education of the Handicapped will not resurface in the foreseeable future.

One substantive ruling that will surely be sent to school districts, the indications of which are already here, will insure that no non-handicapped children will be classified as handicapped so that school districts can acquire federal or state funds provided for handicapped students and use them for other purposes.

Q: It is assumed that in the next five years educators will continue to witness litigation relative to the education of the handicapped. In which areas will the concentration be most prevalent?

A: Three areas will probably contain the bulk of suits introduced between 1983 and 1987 barring any amendments to the law. Generally speaking, these are expense related items.

The 12 month school year will be litigated because boards are not organized to handle such cases. Money is scarce for such a program.

Next in the order of suits will be the extended school day. This presents a problem because of staffing, transportation and finances.

Finally, because of a lack of clear rules in the law will be the

area of related services. Each one of the related services is usually different and no general ruling on services is yet available.

Summary

The final assumption from all of the information presented is that the education of the handicapped can be accomplished economically if boards of education and professional staff members have a deep commitment to such a program supported by written plans for implementation. Following this suggestion and others that have been discussed will "Keep the Ball in Your Court and Out of the Law Court."